

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

HARRY SETTLES,)
)
Plaintiff,)
)
vs.) Case No. 4:13-CV-662 (CEJ)
)
BRIAN K. LIVENGOOD and HOGAN)
TRANSPORTS, INC.,)
)
Defendants.)

MEMORANDUM AND ORDER

On July 13, 2015, pursuant to plaintiff's stipulation for dismissal, the Court entered an order reflecting the dismissal of the action and ordered the parties to pay their own costs. Defendants move to enforce the order to require plaintiff to pay the deposition costs of defense expert Kevin Breen. Plaintiff has filed a response in opposition to the motion.

On May 18, 2015, plaintiff took Mr. Breen's deposition. His fee for attending the deposition was \$1,200.00. On September 25, 2015, counsel for defendants notified counsel for plaintiff that Mr. Breen's invoice was still unpaid and requested that plaintiff pay the amount owed. Plaintiff's counsel responded that the invoice would not be paid because the request was for payment was not made until more than three months after settlement.

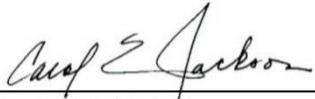
Federal Rule of Civil Procedure 26(b) provides that, "[u]nless manifest injustice would result, the court must require that the party seeking discovery . . . pay the expert a reasonable fee" for appearing at deposition. Fed.R.Civ.P. 26(b)(4)(E). Consistent with Rule 26(b), the July 13 order directed the parties to

pay their own costs included plaintiff's payment of the expert witness deposition fee. Plaintiff's contention that the principles of equitable estoppel and laches preclude defendants from seeking payment after the settlement was completed is without merit. Because of the court order, plaintiff was obligated to pay the fee for Mr. Breen's deposition, regardless of when the bill was submitted to him. Plaintiff cannot claim that he is prejudiced by being required to do now what he was required to do several months ago.

Accordingly,

IT IS HEREBY ORDERED that defendants' motion to enforce court order [Doc. #94] is **granted**.

IT IS FURTHER ORDERED that the plaintiff shall have until **January 18, 2016**, to pay Engineering Systems, Inc., the sum of \$1,200.00, representing the expert witness deposition fee incurred in this litigation.



CAROL E. JACKSON
UNITED STATES DISTRICT JUDGE

Dated this 8th day of January, 2016.